Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-262
Tier Buy Through Prohibitions	)	

REPLY COMMENTS OF CONTINENTAL CABLEVISION, INC.

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Continental Cablevision submits these Reply Comments on the satellite tier buy through regulations the Commission has proposed in this proceeding. Comments filed by virtually all parties reflect a broad consensus.

First, one cannot assume that existing addressable systems can automatically accommodate a satellite tier buy through prohibition. Even in addressable systems, the addressable boxes are typically placed only to premium subscribers, not to all tier households. There is an extremely high cost, documented in the Comments, to equip, retrofit, or replace system components and converters to accommodate universal addressability. Such re-engineering is generally regarded as unfriendly to consumer wishes, as it entails disabling many of the "cable ready" features of TV receivers. It also has the drastic effect of compelling massive investment in addressable analog converters at the very time the industry has committed to digital compression which will make such boxes obsolete; and before the affected industries can resolve their compatibility problems under the FCC's equipment compatibility rulemaking.

Second, one cannot assume that trapping, filtering, and realignment can automatically accommodate a satellite tier buy through prohibition. Trapping creates interference on adjacent channels. It requires substantial, costly, labor-intensive visits to subscriber premises, taps, and pedestals. Because of the need for reconfiguration of traps, it substantially limits the flexibility to add new services. Because of the physical limits of connecting multiple traps to a tap port or within a lock box, trapping solutions increase signal leakage, signal degradation, and theft of service. Realigning satellite tier signals on upper tiers often places premium services on channels most subject to interference, risking an even further decline in pay revenue. Placing such satellite services on upper channels will also adversely affect advertising revenue, because of advertisers' entrenched beliefs about viewership patterns.

Third, package discounts that extend savings to customers are part of widely accepted marketing strategies, are advantageous to consumers, and should not be restricted so long as packages are available to all customers who purchase the same combination of services. The Commission should not seek to regulate such marketing unless it is presented with a case showing packages being used to compel the purchase of tiers. Not a single comment presented any evidence of such evasion. Nor should the Commission seek to artificially force the unbundling of satellite services into a la carte services. Programmers have

advanced a detailed and convincing case that packaging services together increases viewership, and advertising revenue, thereby decreasing the direct cost to the consumer.

Among the Comments, those of NATOA are unique for their singular disregard for any for these real world issues. NATOA's comments are devoted to three simple propositions: (1) every cable television system should be presumed capable of complying with the tier buy through prohibition, without any FCC effort at adopting interpretive or implementing regulations; (2) cities should be vested with the authority to waive the requirement, with the Commission reviewing such decisions only for abuse of authority; (3) every new system build, rebuild, or modification should be required to incorporate such equipment as is necessary to apply the buy through prohibition, unless excused by a franchising authority.

NATOA entirely ignores the cost of addressability, which was the very reason that Congress adopted a 10 year grace period. 138 Cong. Rec. S 14608 (Sep. 22, 1992). It ignores the drag which mandatory investment in analog converters will place on the deployment of digital compression. It ignores the technical problems in relying on channel realignment and trapping solutions. It even ignores the underlying law.

NATOA insists that the cost of converters cannot be considered in evaluating any waiver, when that is precisely the

cost on which Congress concentrated. It even claims that unacceptable costs be deemed acceptable if an MSO can cross-subsidize from another system, thereby ignoring the recurring theme of the Act to base franchise requirements on community needs and interests after accounting for the cost of meeting those needs. E.g., 47 U.S.C. § 546. It claims that no waiver may be granted after the 10 year grace period expires, when the Act is to the contrary. Conf. Rep. 64. It even claims that an exemption for nonaddressability would "gut" the provision, when the very purpose of the implementation exemption is to delay mandatory investment in addressability. Finally, it would have the FCC entrust both the enforcement and waiver power Congress vested in the Commission to NATOA members themselves. NATOA does not make the slightest effort to reconcile these positions with the law -- because the positions are directly contrary to statute.

Nor has NATOA made any effort to investigate the costs or engineering at issue;[1/] to consider the effect its position would have on the future of compression;[2/] or to consider how subscribers respond to having their tiers scrambled and "cable

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1/ By contrast, the Massachusetts Cable Television Commission (p.7) properly leaves addressability in new construction to be negotiated in franchise agreements.

2/ Compare EIA/CEG (n.11), who properly seek flexibility pending the compatibility rulemaking.

ready" TV features disabled by addressable converters.[3/] Instead, it has simply targeted this rulemaking as one more exercise in piling costs upon cable (and burdens on its customers) without concern for the consequences. It is a theme repeated in many of NATOA's comments in these Cable Act rulemakings.

NATOA's very indifference to the real world is the best evidence of the need for the Commission to exclude franchising authorities from any power to administer the buy through provision. Instead, the Commission should adopt the carefully structured rules suggested in our earlier Comments. Those proposed rules craft an exemption for systems that do not scramble the tiers, while also requiring systems that do scramble tiers to provide converters to basic only customers at cost. That is a fair resolution that fully serves the purpose of the statute without prejudicing the future of compression or the future of equipment compatibility.

3/ Both New Jersey (p.3-4) and Massachusetts (p.8) reflect the consumer concern over such solutions.

Respectfully submitted,

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